

Barnes/Richardson

Global Trade Law

1420 New York Avenue, NW
7th Floor
Washington, DC 20005

Tel: 202 628-4700
Fax: 202 628-0735
www.barnesrichardson.com

November 22, 2004

Barnes, Richardson & Colburn
New York / Chicago / Washington, DC

475 Park Avenue South
New York, NY 10016
Tel: 212 725-0200
Fax: 212 889-4135

303 East Wacker Drive
Suite 1100
Chicago, IL 60601
Tel: 312 565-2000
Fax: 312 565-1782

RECEIVED
NOV 22 2004
DEPT. OF COMMERCE
ITA
IMPORT ADMINISTRATION

Mr. James J. Jochum
Assistant Secretary for Import Administration
U.S. Department of Commerce
Central Records Unit
Room 1870
14th and Constitution Avenues
Washington, DC 20230

Re: Notice of Proposed Rulemaking Concerning Certification of Factual Information During
Antidumping and Countervailing Duty Proceedings

Dear Mr. Jochum:

We are filing these comments concerning proposed changes in certifications, which companies and their counsel submitted to the Department of Commerce ("Department") as contained in the Department's September 22, 2004 Notice of Proposed Rule making (69 F.R. 56738).

For the reason stated below, the changes are unreasonably onerous, vague, and would compromise attorney-client privilege. The current regulations and Department practice provide more than adequate safeguards and penalties. The proposed company certification is onerous and unnecessary.

The proposed regulations require that a company representative who supervises the preparation of a submission "list...those other individuals with significant responsibility for preparation of part or all of the submission" 69F.R. at 56740. This requirement is unreasonable in that

- 1) it would take a significant amount of time in the case of large companies;
- 2) does not provide any safeguards;
- 3) is vague in that it gives no guidance as to the definition of "significant responsibility" or difficulty and
- 4) does not address the necessity of obtaining this information from affiliated parties, such as resellers or input suppliers or outside contractors whose data is reported.

First, as the Department is aware, preparation of a response involves many individuals.

These could include individuals in many diverse departments, including accounting, traffic, legal, human resources, engineering, sales, and production among others. In addition these individuals could be located at numerous locations, plants, warehouses, and sales branches, in the case of large respondents. An accurate compilation of such a list would require significant time and would divert resources of those personnel directly involved with the preparation of the response. The list of participants at verification alone may easily number 20 to 25, or more individuals in the case of a large company.

Second, it is difficult to conceive what useful purpose this would serve. It would not aid in determining if an error or misstatement occurred, or, if one was discovered, who was responsible. In addition, such a list would rapidly become outdated as personnel are transferred within, or, with a company, group of companies, or, leaves the company.

Third, the regulations give no guidance as to the definition of "significant responsibility". Is it a function of the potential impacts on any resulting margin; the level of individual involved within the company; the degree to which that individual's work is reviewed by others prior to submission?

Fourth, the regulation is also vague in that it does not address whether it also applies to affiliated parties whose information appears in the response. If the Department requires respondents obtain and list individuals employed by affiliated parties who provided data, the added burden would be significant without any practical benefit.

For the above reasons we request that the ITA modify its proposed regulations to eliminate the requirement that all individuals who had a "significant role" on the preparation of the response be eliminated.

Very truly yours,

BARNES, RICHARDSON & COLBURN

By:



Donald J. Unger
Kazumune V. Kano